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To: Microsoft ATR
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Subject: Proposed Microsoft Settlement Comment

The proposed Microsoft settlement with the Department of Justice is a sweetheart deal for Microsoft. The DOJ wants to get on to more important duties like confiscating nail clippers at airports, so the deal looks good to them. But to those of us who got our legal education from old episodes of "Law and Order," the deal stinks.

How does it restore competition? What does it do for those hundreds of competitors who are no longer even in business because of Microsoft's monopolistic tactics? Well, those outfits -- if they exist and if they can find the money to do so -- can file civil suits. But most of them won't. I would like to see a class action lawsuit against Microsoft. What the settlement seems to do is prohibit Microsoft from breaking the law IN THIS SPECIFIC WAY for a period of five years. Imagine a murderer who shot his victims being enjoined for five years from using a gun, but still being allowed to carry a knife. It is important to understand that Microsoft management does not feel the slightest bit of guilt. They are, as they have explained over and over again, just trying to survive in a brutally competitive industry, one in which they could go from winner to loser in a heartbeat. The fact that Microsoft makes in excess of 90 percent of the profit of the entire software industry, well that's just the happy result of a lot of hard work. Pay no mind to that \$36 billion they have in the bank. And since Microsoft doesn't feel guilty, their motivation in agreeing to this settlement is just to get on with business. This is a very important fact to keep in mind when trying to understand the event. This isn't Microsoft being caught and punished, it is Microsoft finding a path back to business as usual, which is to say back to the very kind of practices that got them here. Microsoft, confident in its innate cleverness, is willing to give up certain old monopolistic behaviors because there are new monopolistic behaviors now available to replace them.

Microsoft has to open-up certain Windows communication APIs to other developers, but there is no restriction at all on the addition of new APIs. So expect a LOT of new APIs, many of which will do nothing at all except confuse competitors. There is nothing in the agreement that says Microsoft has to tell anyone which APIs it really intends to use. So just like interpreted software is obfuscated to hinder would-be copiers, expect Microsoft to obfuscate Windows, itself. Microsoft has to allow third-party middleware, but a glaring loophole was left for Microsoft, simply to redefine code as not being middleware. If they stop distributing code separately and draw it into Windows, well as I read the proposed settlement, middleware stops being middleware after 12 months. So if something new comes up (all the old middleware is

explicitly defined) Microsoft can integrate it and screw the opposition one year after they stop distributing it separately. These loopholes are nice, but they don't amount to the kind of leverage Microsoft would want to have before signing away any rights.

Bill Gates would want us to believe that he has a new and completely unfettered weapon so powerful that it makes some of the older weapons completely unnecessary. He has found that weapon in .NET. But hey, .NET isn't even successful yet, right? It might be a big flop. Wrong. Those who think there is any way that .NET won't be universally deployed are ignoring Microsoft's 90 percent operating system market share. Whether people like .NET or not, they'll get it as old computers are replaced with new ones. Within three years .NET will be everywhere whether customers actually use it or not. And that ubiquity, rather than commercial success, is what is important to Microsoft. Here is the deal. .NET is essentially a giant system for tracking user behavior and, as such, will become Microsoft's most valuable tactical tool. It is a system for tracking use of services, and the data from that tracking is available only to Microsoft. .NET is an integral part of Windows' communication system with all calls going through it. This will allow Microsoft (and only Microsoft) to track the most frequently placed calls. If the calls are going to a third-party software package, Microsoft will know about it. This information is crucial. With it, Microsoft can know which third-party products to ignore and which to destroy. With this information, Microsoft can develop its own add-in packages and integrate them into the .NET framework, thus eliminating the third-party provider. A year later, as explained above, the problem is solved. Alternately, Microsoft could use the information (this .NET-generated market research that Microsoft gets for free and nobody else gets at all) to change Windows to do service discovery giving an automatic priority to Microsoft's middleware. The advantage here is in giving the appearance of openness without actually being open.

These possible behaviors are not in any way proscribed by the proposed settlement with the DOJ, yet they virtually guarantee a continuation of Microsoft's monopoly on applications and services as long as Microsoft has an operating system monopoly. When Microsoft talks about "innovation," this is what they mean. Nothing is going to change.

My preferred outcome is still that Microsoft be forced to sell its language business, and the proceeds of that sale be distributed to registered users of Microsoft products.